

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.4.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.A.No.2677 of 2001

1. The Government of Tamil Nadu,
rep. by Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.
 2. The Commissioner for Land Administration,
Chepauk, Chennai-5.
 3. The Collector of Coimbatore District,
Coimbatore.
- .. Appellants
- vs.
- C.B.M.Sakunthala, Memorial Trust,
rep. by C.M.Ramraj
- .. Respondent

Writ Appeal against the order of this Court dated 9.7.2001 in W.P.No.3743 of 1995. The Petition presented to this Hon'ble Court under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in respect of G.O.Ms.No.208, Revenue Department (L2) dated 22.2.95 issued by the first respondent, and quash the same.

For appellants : Mr.K.Elango, Spl.G.P.

For respondent : Mr.AL.Somayaji,
Senior Counsel for
Mr.N.Ishtiaq Ahmed

JUDGMENT

(The Judgment of the Court was delivered by P.Sathasivam,J.)

The above Writ Appeal is directed against the order of the learned single Judge dated 9.7.2001 made in W.P.No.3743 of 1995, in and by which, the learned Judge, after accepting the stand taken by the writ petitioner-Trust, quashed the impugned Government Order and allowed their Writ Petition.

2. For convenience, we shall refer the parties as arrayed in the Writ Petition.

3. According to the petitioner-Trust, in the year 1973, the Managing Trustee of the petitioner-Trust applied to the first respondent-Government of Tamil Nadu, seeking permission for assignment of 42 acres of land to start Arts and Science College in Sundakkamuthur Village, Coimbatore District. Based on the report of the District Collector and the educational authorities, the first respondent, after satisfying about the need and bona-fide of the petitioner-Trust, issued G.O.Ms.No.2557 of Revenue Department, dated 16.12.1975 and directed that the lands measuring 39.79 acres in S.No.131/1, 131/4, 131/7 and 181 of Sundakkamuthur Village, Coimbatore Taluk and District, be placed at the disposal of C.B.M.Sakunthala Memorial Trust for establishment of a College free of land value, but on collection of land revenue, stone value and tree value, subject to the usual conditions under Board's Standing Order No.24 and also subject to the special condition that the lands should not be utilised for any agricultural purpose.

4. After getting the above mentioned order from the Government, according to the petitioner-Trust, it took immediate steps to get affiliation for the College from the then Madras University. At that time, the mandatory requirements under the statutes of the then Madras University for 40 acres of land was minimum required for the establishment of a College in a non-urban area. Thereafter, the affiliation was granted by the University to start a College as a first grade College. The College was formally inaugurated on 1.7.1994. The College was imparting education for the under-graduate courses duly affiliated to Bharathiyar University. On the date of filing of the Writ Petition, it is stated that it has the strength of over 1100 in the day college alone. Apart from the day college, the petitioner-Trust is also having an evening College in the same campus as per the conditions of affiliation given by the then Madras University and the evening College has two courses. The total strength of both the day college and the evening college comes to 1300. The College is an aided College recognised for the purpose of grant-in-aid under the grant-in-aid Code by the Government of Tamil Nadu. After the formation of Bharathiyar University, the College is affiliated to the said University in 1984. It is further stated that the College has to its credit several University rank holders and gold medalists under various disciplines. 5. While so, a notice was issued by the Revenue Divisional Officer, Coimbatore, dated 31.10.1991 to the petitioner-Trust stating that the College buildings are spread over an extent of 6.35 acres only and therefore, the balance of about 33 acres out of the total extent of 39.79 acres remain unutilised by the College and that from the

amounts collected from the students, no facilities for the students have been provided in the vacant lands. Pursuant to the said notice, the petitioner-Trust submitted a reply dated 27.11.1991, giving all the details. It is further stated that without reference to all the details furnished in the reply, the Government passed the impugned order dated 22.2.1995, seeking resumption of an extent of 14.25 hectares of land. Questioning the same, the petitioner-Trust has filed the Writ Petition for quashing the said Government Order.

6. On behalf of respondents 1 and 2, Deputy Secretary to Government, Revenue Department filed a counter, reiterating the conditions of assignment stating that except 6.35 acres, remaining part of the lands were kept unutilised about 15 years and after affording opportunity to the petitioner to submit their explanation, the ultimate order was passed by the Government.

7. The learned Judge, after considering the rival contentions and taking note of General Conditions under B.S.O.No.24 of special condition to the effect that the land should not be utilised for agricultural purpose and after satisfying that there is no violation of any of those conditions by the Trust, quashed the order of the Government and allowed the Writ Petition. Questioning the said order, the Government and their officers preferred the present Appeal.

8. Heard learned Special Government Pleader for appellants as well as Mr.AL.Somayaji, learned Senior Counsel appearing for the respondent-Trust.

9. The only point for consideration in this Appeal is whether there was any violation of conditions of assignment and whether the learned Judge is right in quashing the Government Order seeking resumption of unutilised lands.

10. There is no dispute that on the basis of the application of the petitioner-Trust, a report was called for from the District Collector. Based on the report/remarks of the Collector concerned as well as the purpose for which the lands were sought for assignment and perusing the remarks of the concerned educational authorities, the Government passed an order assigning an extent of 14.25 hectares of land (39.79 acres) in S.Nos.131/1, 131/4, 131/7 and 181 of Sundakkamuthur Village, Coimbatore Taluk and Coimbatore District. It is also not in dispute that the assignment was made subject to two conditions, namely one is condition under Board's Standing Order No.24 and another, of special condition to the effect that the lands should not be utilised for agricultural purpose.

11. It is relevant to point out that the show cause notice dated 31.10.1991 of the Revenue Divisional Officer, Coimbatore. After referring the assignment made in the Government Order dated 16.12.1975, the officer has mentioned that out of the total extent of 39.79 acres, the Trust had constructed buildings only in an area of 6.35 acres and the remaining 33 acres are lying vacant and not being utilised for any purpose for several years. To put it clear that in the show cause notice, except the fact that the extent of 33 acres are lying vacant and not utilised for any other purpose, no other reason has been stated so.

12. On the other hand, in reply dated 27.11.2001 by the Trust, they referred to various courses that are being offered, other buildings such as class rooms, library, hostel, laboratory, auditorium, play ground, etc. It is also stated that they prepared a masterplan for bringing out more buildings in the near future. In the same explanation, the Trust also assured that the assigned lands will be utilised only for educational purposes and the same will be utilised in a phased manner.

13. As rightly observed by the learned Judge, while passing the impugned order dated 22.2.1995, the Government has not taken note of the details furnished in the reply dated 27.11.1991 by the Trust. It is not in dispute that even according to the Government, the Trust has not utilised those vacant lands for agricultural purpose or have any plan to use for such purpose in the future. In such circumstances, it is clear that the petitioner-Trust has not violated the special condition mentioned in the assignment order.

14. Now, we have to consider whether the petitioner-Trust has violated the general conditions under B.S.O.24. Among the various conditions, condition No.6(i) and sub-clauses 2 and 3 read as follows:

"6. Condition for the grant of State land-
(i) Lands at the disposal of Government:- A grant of State land whether for religious, educational or other public purpose should always contain the following conditions:

- (1)
- (2) The Government may resume the land wholly or in part with any buildings thereon, in the event of the infringement of any of the conditions of the grant. In the event of such resumption no compensation shall be payable for any improvements that may have been effected, or other works that may have been executed on the land by the grantee and the grantee shall not be entitled to the repayment of any amount

that may have been paid to the Government for the grant. If there are buildings on the land the Government may direct the grantee to remove them.

The land, if utilised for commercial purposes, when the grant is made free of land value, the beneficiary shall be liable to pay the market value of the land either totally or for the portion converted into commercial purposes as decided by the Government.

3. The Government may resume the land wholly or in part, with any buildings thereon, if in the opinion of the Government the land is required for a public purpose or for conducting mining operations. In the event of such resumption or in the event of the acquisition of the land for any reason, the compensation payable for the land and trees, shall in no case exceed the amount paid for them by the grantee or their value at the time of resumption or acquisition whichever may be less."

15. It is clear from the above condition No.6(2) and (3) that in the event of the infringement or violation of any of the conditions of the grant, the Government is free to resume the entire land assigned or part with any buildings thereon. In the event of such resumption, as per the second condition, no compensation need be paid for any improvement. The same condition makes it clear that if the assigned land is being utilised for commercial purposes, the beneficiary shall be liable to pay the market value of the land either totally or for the portion converted into commercial purposes as decided by the Government. It is not the case of the Government or the other authorities that the assigned lands are being utilised for any other purpose, much less for commercial purpose. Condition No.3 makes it clear that if in the opinion of the Government, the assigned land is required for a public purpose, they are free to resume the land wholly or in any part.

16. We have already referred to the reasons stated in the show cause notice. Admittedly, it is not the case of the Government or the other officers that the land is required for a public purpose. In such circumstances, as rightly pointed out by the learned Senior Counsel appearing for the petitioner-Trust, even the condition No.3 does not attract.

17. All the above mentioned relevant aspects have been duly considered by the learned Judge. In fact, after considering the claim of both sides, the learned Judge in the penultimate paragraph

has specifically made it clear that if there is any specific violations of the conditions of allotment or any illegal activities by the Management in the land in question, the Government is free to issue a proper show cause notice and take further action only after due enquiry. In such circumstances and in the absence of any other contra material, we do not find any valid ground for interference. On the other hand, we are in entire agreement with the conclusion arrived at by the learned Judge. Consequently, the Writ Appeal fails and the same is dismissed. No costs.

cs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai-9.
2. The Commissioner for Land Administration,
Chepauk, Chennai-5.
3. The Collector of Coimbatore District,
Coimbatore.

+ 1 cc to the Government Pleader, SR No.24452

+ 1 cc to M/s. N. Ishtiaq Ahmed, Advocate SR No. 24207

AKR(CO)
SR/21.4.2007

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